

CONTRACT #1
RFS # 337.03-015

**Department of Labor and
Workforce Development**

VENDOR:
**Workers' Compensation
Research Institute (WCRI)**



**STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

PHIL BREDESEN
GOVERNOR

**Andrew Johnson Tower
710 James Robertson Pkwy, 8th FLOOR
Nashville, TN 37243-0655
(615) 741-2582**

JAMES G. NEELEY
COMMISSIONER

January 31, 2005

RECEIVED

FEB 08 2005

FISCAL REVIEW

M. D. Goetz, Jr., Commissioner
Department of Finance and Administration
State Capitol
Nashville, TN 37243

REF: 337.03-015 Non Competitive Contract

Dear Mr. Goetz:

Outlined below is our justification for a Non Competitive Contract with Workers Compensation Research Institute:

The Contract will begin on July 1, 2005 and run for a period of one year ending on June 30, 2006. The Contractor will delivery a status report in approximately thirty days from the start date and a draft report in mid December 2005. A published report is scheduled to be submitted in June of 2006.

The Contractor will provide research and benchmark the performance of workers' compensation systems in no less than 12 states equaling at least 50 percent of the nations benefit payments.

As the cost of workers' compensation premiums increases and reform of the Workers' Compensation law is in effect, research information on workers' compensation in Tennessee and comparison with other states is sought. The Department of Labor and Workforce Development does not have the statistical data on other states in order to perform comparisons to examine the effectiveness of any law modifications. The Workers Compensation Research Institute (WCRI) can help policymakers and others benchmark state system performance or a company's workers' compensation program, assess the effectiveness of policy changes and identify important trends. The comparisons are more meaningful than those commonly seen, because they measure how different systems would perform if a similar set of claims were dropped into each state system. Therefore, the Department needs to acquire this service to measure the status of workers' compensation in Tennessee as compared to other states.

Based on the above justification, I am requesting you approval of this non-competitive contract.

Sincerely,


James G. Neeley, Commissioner

JGN: HS: mho

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

| | | | |
|--|--|--|--|
| RFS # | 337.03-015 | | |
| STATE AGENCY NAME : | Department of Labor and Workforce Development | | |
| SERVICE CAPTION : | Provide research and benchmark the performance of workdrs' compensation systems in 12 states equaling at least 50 percent of the nations benefit payments. | | |
| PROPOSED CONTRACTOR : | Workers' Compensation Research Institute (WCRI) | | |
| CONTRACT START DATE : (if date is < 60 days after F&A receipt, attach required explanation) | 07/01/05 | | |
| LATEST POSSIBLE END DATE : (including ALL options to extend) | 06/30/08 | | |
| TOTAL MAXIMUM COST : (including ALL options to extend) | \$585,000.00 | | |
| APPROVAL CRITERIA : (select one) | <input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service | | |
| ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text) | | | |
| (1) description of service to be acquired : | | | |
| Provide research and benchmark the performance of workers' compensation systems in 12 states equaling at least 50 percent of the nations benefit payments. The Contractor will report trends of the same performance measures and focus on Tennessee to identify the major differences between other states and within the state across time. | | | |
| (2) explanation of the need for or requirement placed on the procuring agency to acquire the service : | | | |
| As the cost of workers' compensation premiums increases and the outcome of the workers' compensation reforms legislation is evaluated, researched information on workers' compensation in Tennessee and comparison with other states must be sought. The Department of Labor and Workforce Development does not have the statistical data on other states in order to perform comparisons to examine the effectiveness of legislative changes. The Workers' Compensation Research Institute (WCRI) can help policymakers and other interested parties including the legislature benchmark state system performance, assess the effectiveness of law changes and identify important trends. The comparisons are more meaningful than those commonlyseen, because they measure how different systems would perform if a similar set of claims were dropped into each state system. Therefore, the Department needs to acquire this service to measure the status of the workers' compensation system in Tennessee as compared to other states. | | | |

| | |
|--|---|
| (3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it : | |
| The service was bought by the agency in FY 04' on a non-competitive basis | |
| (4) name and address of the proposed contractor's principal owner(s) : (not required if proposed contractor is a state education institution) | |
| Workers Compensation Research Institute, 955 Massachusetts Avenue, Cambridge, MA 02139 | |
| (5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service : | |
| Workers' Compensation Research Institute is an independent, no-for-profit research organization providing quality, objective information about public policy issues involving workers' compensation systems. Organized in 1983 the Institute's work benefits public officials, employers, insurers, injured workers, organized labor and others affected by workers' compensation systems across the United States. The Institute's work takes several forms: research studies of major issues, studies of individual state systems, studies of states that have undergone major legislative changes, research briefs and presentations. | |
| (6) documentation of OIR endorsement of the Non-Competitive procurement request : (required <u>only</u> if the subject service involves information technology) | |
| select one: | <input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request |
| (7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request : (required <u>only</u> if the subject service involves training for state employees) | |
| select one: | <input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request |
| (8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation : | |
| The Department of Labor and Workforce has previously participated in studies with the WCRI. The studies Workers' Compensation in Tennessee: Administrative Inventory and CompScope Benchmarks: Multistate Comparisons 1994-2000, both copyrighted by the WCRI in 2003, demonstrates the expertise the Institute has with Tennessee data, as well as, showing the proficiency it has in benchmarking workers' compensation systems. Based upon these studies on workers' compensation issues, the WCRI has the perspective available to complete their research on the workers' compensation systems in no less than twelve states. | |
| (9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process : (Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.) | |
| This request for a non-competitive authority is based on several factors. WCRI included Tennessee in the research publication, CompScope Benchmarks: Multistate Comparisons 1994-2000, and is familiar with issues of interests to policy makers in Tennessee. Second, CompScope provided specific data to the Executive Branch and the Legislative Branch of Tennessee government by which system cost drivers were identified. Third, WCRI has the trademark for CompScope which created standard definitions for the data within and across jurisdictions and over time which materially enhance comparability by adjusting the measures for interstate differences in waiting jurisdictions and over time which materially enhance comparability by adjusting the measures for interstate differences in waiting periods, injury mix, industry mix, and wage levels. Fourth, data is representative of each state system, including claims from private insurers, state funds, self-insurers, and residual markets. Fifth, methodology serves to isolate the differences in performance that are due to system design and implementation from the differences that are due to interstate variations. Sixth, CompScope data represents more than fifty percent of the nation's benefit payments and over fifty percent of Tennessee's benefit payments. | |
| AGENCY HEAD REQUEST SIGNATURE: (must be signed by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances) | <div style="border: 1px solid black; height: 100px; width: 100%; position: relative;"> </div> <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-between;"> SIGNATURE DATE: 2-8-05 </div> |

| FA CONTRACT INFORMATION SUPPLEMENT FOR ALL FA-TYPE CONTRACTS — COMPLETE <u>EITHER</u> SECTION A <u>OR</u> SECTION B | |
|---|---|
| Contract RFS # | 337.03-015 |
| Contractor: | The Workers' Compensation Research Institute (WCRI) |
| SECTION A— CONTRACTOR IS AN INDIVIDUAL | SECTION B— CONTRACTOR IS A COMPANY (e.g., sole proprietorship, partnership, or corporation) |
| Is or has the contractor been a state employee? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES | Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company? <input checked="" type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES |
| Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required) | Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required) |
| Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel <i>MUST</i> sign an analysis of this procurement using the TCRS analysis guidelines) | Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel <i>MUST</i> sign an analysis of this procurement using the TCRS analysis guidelines) |
| SIGNATURE | |
| <div style="border: 1px solid black; height: 40px; width: 100%;"></div> | |
| SERVICE CONTRACTS COORDINATOR | DATE |

CONTRACT SUMMARY SHEET

| | | | |
|---|---------------------------------|---|-----------------------|
| RFS Number: | 337.03-015 | Contract Number: | |
| State Agency: | Labor and Workforce Development | Division: | Worker's Compensation |
| Contractor: | | Contractor Identification Number | |
| The Workers' Compensation Research Institute (WCRI) | | X | V- |
| | | C- | 36326428500 |

Service Description

The Contractor will provide research and benchmark the performance of workers' compensation system in no less than 12 states.

| | | | | | | | |
|----------------------------|--------------------|----------------------|--------------------------------|--------------------------|---|----------------------|--|
| Contract Begin Date | | | | Contract End Date | | | |
| 7/1/2005 | | | | 06/30/06 | | | |
| Allotment Code | Cost Center | Object Code | Fund | Grant | Grant Code | Subgrant Code | |
| 337.03 | 302 | 083 | 11 | x | on STARS | | |
| FY | State Funds | Federal Funds | Interdepartmental Funds | Other Funding | Total Contract Amount include ALL amendments | | |
| 06 | \$195,000.00 | | | | \$195,000.00 | | |
| | | | | | \$0.00 | | |
| | | | | | \$0.00 | | |
| | | | | | \$0.00 | | |
| | | | | | \$0.00 | | |
| | | | | | \$0.00 | | |
| Total: | \$195,000.00 | \$0.00 | \$0.00 | \$0.00 | \$195,000.00 | | |

| | | | |
|--|---------------------------------|--|----------|
| CFDA Number: | | Check the box (below) ONLY if the answer is YES: | |
| State Fiscal Contact | | Is the Contractor a SUBRECIPIENT? (per OMB A-133) | |
| Name: | Melvin O'Neal | Is the Contractor a VENDOR? (per OMB A-133) | x |
| Address: | 8th Floor, Andrew Johnson Tower | Is the Fiscal Year Funding STRICTLY LIMITED? | |
| Phone: | 615 532-1071 | Is the Contractor on STARS? | x |
| Procuring Agency Budget Officer Signature | | Is the Contractor's FORM W-9 ATTACHED? | |
| | | Is the Contractors Form W-9 Filed with Accounts? | x |

| COMPLETE FOR ALL AMENDMENTS (only) | | |
|------------------------------------|----------------------------------|---------------------|
| | Base Contract & Prior Amendments | This Amendment ONLY |
| End Date > | | |
| FY | | |
| FY | | |
| FY | | |
| FY | | |
| FY | | |
| FY | | |
| Totals: | \$0.00 | \$0.00 |

Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
AND
THE WORKERS' COMPENSATION RESEARCH INSTITUTE**

This Contract, by and between the State of Tennessee, Department of Labor and Workforce Development, hereinafter referred to as the "State" and The Workers' Compensation Research Institute (WCRI, hereinafter referred to as the "Contractor,") is for the provision of providing research and benchmark the performance of workers' systems, as further defined in the "SCOPE OF SERVICES."

The Contractor is a not-for-profit research organization. The Contractor's address is:

955 Massachusetts Avenue
Cambridge, Massachusetts 02139

The Contractor's place of incorporation or organization is Illinois.

A. SCOPE OF SERVICES:

A.1. Purpose:

The Contractor will provide research and benchmark the performance of workers' compensation systems in 10-12 states equaling at least 50 percent of the nation's benefit payments.

A.2. The Contractor will provide benchmarks of the following aspects of system performance, both interstate comparisons and trends:

- a. Time from injury to notice of injury and first payment
- b. Average total cost per claim and benefit payments (medical and indemnity benefits)
- c. Vocational rehabilitation use and costs
- d. Benefit delivery expenses (litigation and medical cost containment)
- e. Defense attorney involvement
- f. Duration of disability and indemnity payments
- g. Claim closure patterns

A.3. The Contractor is not limited to the benchmarks in Section A.2., but may include additional aspects of system performance as determined by the both parties.

A.4. The Contractor shall use data adjusted for interstate differences in injury and industry mix and wage levels.

A.5. The Contractor will report trends of the same performance measures and focus on Tennessee to identify the major differences between other states and within the state across time.

A.6. The Contractor will provide benchmarks in an electronic copy of a written report to the Governor, the Commissioner of Labor and Workforce Development, the Commissioner of Finance and Administration, the chairman and members of the Workers' Compensation Advisory Council, and the chairman and members of the Workers' Compensation Legislative Oversight Committee.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on 07/01/05 and ending on 06/30/06. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than three (3) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one hundred ninety-five thousand (\$195,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

| <u>SERVICE UNIT/MILESTONE</u> | <u>AMOUNT</u> |
|--|----------------------|
| Delivery of a status report on 7/30/05 | \$ 125,000.00 |
| Delivery of the draft report on or before 12/15/05 | \$ 60,000.00 |
| Delivery of the published report on or before 06/15/06 | \$ 10,000.00 |

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Sue Ann Head, Administrator
 Department of Labor and Workforce Development
 710 James Robertson Parkway, Andrew Johnson Tower, 8th Floor
 Nashville, TN 37243-0655
 Telephone Number 615 741-5384
 Facsimile Number 615 253-5266

The Contractor:

Richard Victor, Executive Director
 Workers Compensation Research Institute
 955 Massachusetts Avenue
 Cambridge, MA 02139
 Telephone Number 617 661-9274
 Facsimile Number 617 661-9284

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile

transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.5. Date/Time Hold Harmless. As required by ***Tennessee Code Annotated***, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.6. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be

deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by ***Tennessee Code Annotated***, Section 8-6-106.

- E.7. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in ***Tennessee Code Annotated***, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E.8. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

IN WITNESS WHEREOF:

THE WORKERS' COMPENSATION RESEARCH INSTITUTE:

Richard Victor, Executive Director

Date

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:

James G. Neeley, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date